



**BILLING CODE: 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2010–0045]**

**[FXES11130900000C2-123-FF09E32000]**

**Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petitions to  
List the Mexican Gray Wolf as an Endangered Subspecies or Distinct Population  
Segment with Critical Habitat**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on two petitions to list the Mexican gray wolf (*Canis lupus baileyi*) (Mexican wolf) as an endangered subspecies or Distinct Population Segment (DPS) and designate

critical habitat under the Endangered Species Act of 1973, as amended (Act). Although not listed as a subspecies or DPS, the Mexican wolf is currently listed as endangered within the broader 1978 gray wolf listing, as revised, which listed the gray wolf in the lower 48 States and Mexico. Therefore, because all individuals that comprise the petitioned entity already receive the protections of the Act, we find that the petitioned action is not warranted at this time. However, we continue to review the appropriate conservation status of all gray wolves that comprise the 1978 gray wolf listing, as revised, and we may revise the current listing based on the outcome of that review.

**DATES:** The finding announced in this document was made on [INSERT DATE OF FEDERAL REGISTER PUBLICATION].

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS–R2–ES–2010–0045. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

**FOR FURTHER INFORMATION CONTACT:** Rick Sayers, (see **ADDRESSES**); by telephone at (703) 358–2171; or by facsimile at (703) 358–1735. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay

Service (FIRS) at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

### *Previous Federal Actions*

The Mexican wolf was listed as an endangered subspecies on April 28, 1976 (41

FR 17736). In 1978, we published a rule (43 FR 9607, March 9, 1978) reclassifying the gray wolf as an endangered population at the species level (*C. lupus*) throughout the conterminous 48 States and Mexico, except for the Minnesota gray wolf population, which was classified as threatened. This species level listing subsumed the previous Mexican wolf subspecies listing, although it stated that the Service would continue to recognize valid biological subspecies for the purpose of research and conservation (43 FR 9607). We initiated recovery programs for the gray wolf in three broad geographical regions of the country: The Northern Rockies, the Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies. The 1982 Mexican Wolf Recovery Plan did not contain measurable recovery criteria for delisting, but rather it recommended a two-pronged approach to conservation that included establishment of a captive breeding program and reintroduction of wolves to the wild (Service 1982, p. 28).

In 1996, we published a Final Environmental Impact Statement, “Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States,” after assessing potential locations for the reintroduction of the Mexican wolf (61 FR 67573; December 23, 1996). On April 3, 1997, the Department of the Interior issued its Record of Decision on the Final Environmental Impact Statement (62 FR 15915). We published a final rule, “Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico,” on January 12, 1998 (63 FR 1752), which established the Mexican Wolf Experimental Population Area in central Arizona and New

Mexico and designated the reintroduced population as a nonessential experimental population under section 10(j) of the Act. In March of that year, 11 Mexican wolves from the captive breeding program were released to the wild.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we established three DPS designations for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Mexican wolves in the Southwestern DPS retained their previous endangered or experimental population status. On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife v. Norton*, 1:03-1348-JO (D. Or. 2005) and *National Wildlife Federation v. Norton*, 1:03-CV-340, (D. Vt. 2005)). The Courts invalidated the revisions of the gray wolf listing, and also invalidated the three DPS designations in the April 1, 2003, rule and the associated special regulations.

The status of the Mexican wolf as endangered was not changed by the listing rule or the Courts' invalidation of the rule. Invalidation of the rule establishing the three DPSs did cause the suspension of formal separate recovery planning for the Southwestern DPS, as that entity no longer existed as such, but recovery efforts for the Mexican wolf continued as part of the reinstated 1978 lower-48-State-and-Mexico gray wolf listing. On May 5, 2010, we announced the availability of the Mexican Wolf Conservation

Assessment (75 FR 24741), a nonregulatory document intended to provide scientific information relevant to the conservation of the Mexican wolf in Arizona and New Mexico as a component of the Service's gray wolf recovery efforts (Service 2010). In December 2010, we convened a new Mexican Wolf Recovery Team, which is tasked with revising and updating the 1982 recovery plan. The new recovery plan will provide objective recovery criteria for the delisting of the Mexican wolf. A draft revised recovery plan is anticipated in 2013, and the final plan in late 2014.

On August 11, 2009, we received a petition from the Center for Biological Diversity requesting that the Mexican wolf be listed as an endangered subspecies or DPS and critical habitat be designated under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that the Mexican wolf be listed as an endangered subspecies and critical habitat be designated under the Act. The petitions clearly identified themselves as such and included the requisite identification information for the petitioner(s), as required by 50 CFR 424.14(a). On October 22, 2009, we responded with letters to the petitioner(s) indicating that the petitions were under review and that we would make a finding as to whether or not the petitions present substantial information indicating that the requested action may be warranted. In response to complaints from the petitioners, we agreed, pursuant to a stipulated settlement agreement, to complete the 90-day finding in response to these petitions by July 31, 2010.

On August 4, 2010, we published in the **Federal Register** a notice of our 90-day

finding (75 FR 46894) addressing both petitions. Our finding stated that the petitions presented substantial scientific or commercial information indicating that the Mexican wolf subspecies may warrant listing, such that reclassifying the Mexican wolf as a separate subspecies may be warranted, and we initiated a status review. One of the petitions also requested listing of the Mexican wolf as an endangered DPS. While we did not address the DPS portion of the petition in our finding, we stated that we would further evaluate that information during the status review. This notice constitutes the 12-month finding on the two petitions to list the Mexican wolf as either an endangered subspecies or DPS with critical habitat.

### *Species Information*

The Mexican wolf is a genetically distinct subspecies of the North American gray wolf; adults weigh 23–41 kilograms (kg) (50–90 pounds (lbs)) with a length of 1.5–1.8 meters (m) (5–6 feet (ft)) and height at shoulder of 63–81 centimeters (cm) (25–32 inches (in)) (Young and Goldman 1944; Brown 1983, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1983, p. 118); solid black or white Mexican wolves do not exist as seen in other North American gray wolves.

Integration of ecological, morphological, and genetic evidence supports several conclusions relevant to the southwestern United States regarding gray wolf taxonomy and range. First, there is agreement that the Mexican wolf is distinguishable from other gray

wolves based on morphological and genetic evidence. Second, recent genetic evidence continues to support the observation that historic gray wolf populations existed in intergradations across the landscape as a result of their dispersal ability (Leonard *et al.* 2005, pp. 9–17). Third, evidence suggests that the southwestern United States (southern Colorado and Utah, Arizona, and New Mexico) included multiple wolf populations distributed across a zone of intergradation and interbreeding, although only the Mexican wolf inhabited the southernmost extent (Leonard *et al.* 2005, pp. 9–17). Currently, Mexican wolves exist in the wild only where they have been reintroduced; that population has oscillated between 40 and 60 wolves since 2003.

Historically, Mexican wolves were associated with montane woodlands and adjacent grasslands (Brown 1983, p. 19) in areas where ungulate prey were numerous. Wolf packs establish territories, or home ranges, in which they hunt for prey. Recent studies have shown the preferred prey of Mexican wolves to be elk (Reed *et al.* 2006, pp. 1127–1133; Merkle *et al.* 2009, pp. 480–485).

Gray wolves die from a variety of causes including disease, malnutrition, debilitating injuries, interpack strife, and human exploitation and control (Service 1996, p. A-2). In the reintroduced Mexican wolf population, causes of mortality have been largely human-related (vehicular collision and illegal shooting). Additionally, reintroduced Mexican wolves have been removed from the wild for management purposes. To date, the Mexican wolf population has had a failure (mortality plus removal) rate too high for natural or unassisted population growth, and, as stated above,



the population has oscillated between 40 and 60 wolves since 2003. The most recent end-of-year population survey in 2011 documented a minimum of 58 Mexican wolves in the wild.

## **Finding**

The Mexican wolf has been listed as endangered as part of the broader lower-48-State-and-Mexico gray wolf listing, as revised, since 1978 (43 FR 9607, March 9, 1978). Thus, although not currently listed separately as a subspecies or DPS, Mexican wolves have been protected by the Act for the last 36 years. As a result of this protection, and the actions described below, the minimum number of Mexican wolves in the wild in the United States has risen from none in the late 1990's to 58 in 2011. It is important to note that the 1978 reclassification rule stipulated that “biological subspecies would continue to be maintained and dealt with as separate entities” (43 FR 9609), and offered “the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs” (43 FR 9610, March 9, 1978).

In accordance with these assurances, the Service has actively focused on Mexican wolf conservation and recovery beginning with our involvement in the establishment of the captive breeding program in the late 1970s (Parsons 1996, Lindsey and Siminski 2007), the completion of the Mexican wolf recovery plan in 1982 (Service, 1982), the establishment of the Mexican Wolf Experimental Population Area in central Arizona and New Mexico in 1998 (63 FR 1752), and the reintroduction of Mexican wolves into the

wild later that same year. Further, we are currently in the process of revising and updating the 1982 recovery plan, which we anticipate releasing for public and peer review in 2013. These actions demonstrate the Service's long-standing commitment to Mexican wolf recovery.

The current listing of all gray wolves in the lower 48 states and Mexico (save for those in the western Great Lakes, and the northern Rocky Mountains) encompasses any gray wolf subspecies or DPS that may occur in those same states or Mexico. More generally, the listing of any species as endangered or threatened encompasses within it all subspecies or potential DPSs comprising that species. Were the Service to separately list each constituent subspecies or potential DPS comprising an already listed entity, the endangered and threatened list would almost certainly be expanded several fold, and the limited resources of the Service would be consumed for years by the task, only to give again the protection of the Act to individual plants and animals that already had it. There is no indication in the Endangered Species Act that Congress intended the Service to list separately each of the constituent subspecies or DPSs encompassed within a broader listed entity, and it has been the consistent practice of the Service not to do so.

Therefore, because all individuals that comprise the petitioned entity already receive the protections of the Act, and in fact are collectively the focus of a significant Service-led recovery effort consistent with the 1978 revised listing, we find the petitioned action is not warranted at this time. However, we continue to review the appropriate conservation status of all gray wolves that comprise the 1978 lower-48-State-and-Mexico

gray wolf listing, as revised, and we may revise the current listing based on the outcome of that review. In particular, we note that we could not, consistent with the requirements of the Act, take any action that would remove the protections accruing to Mexican wolves under the 1978 lower-48-State-and-Mexico listing, as revised, without first determining whether the Mexican wolf warranted listing separately as a subspecies or a DPS, and, if so, putting a separate listing in place.

### **References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

### **Authors**

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program.

### **Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2012

Christine E. Eustis

Acting Director, Fish and Wildlife Service

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